

REMARKS

This Amendment is being submitted under 37 CFR 1.114. Accordingly, accompanying the Amendment is a (1) Request for Continued Examination (RCE) together with the required fee, and (2) a petition for a two (2) month extension of time together with the required fee.

Section 112 Rejections

The Amendment corrects the lack of antecedent basis in claims 7 and 21 noted by the Examiner.

Section 103 Rejections

All of the claims are again rejected under 35 U.S.C. §103(a) as being unpatentable over Spreen, U.S. Patent No. 1,688,887 ("Spreen") in view of Fraenkel, U.S. Patent No. 6,311,500 ("Fraenkel") and Shepherd, U.S. Patent No. 2,863,305 ("Shepherd") or Hughes, U.S. Patent No. 5,520,278 ("Hughes"). Applicant respectfully traverses the rejections.

Applicant agrees with the Examiner that measuring cups having filling indicia are old. Applicant also agrees that whether or not the present invention is obvious depends on whether there was, existing among persons of ordinary skill in the art at the time the invention was made, a motivation to make it. This is a simple invention. Once the motivation to make it is recognized, there is no technological barrier to implementing it.

The argument is about whether there was motivation to make the invention. The Examiner has asserted that the motivation to add filling indicia to the ice cube tray of Spreen is to make it more convenient for the user when filling the compartments. Applicant disagrees for three reasons:

1) First, in light of everyday experience, people who fill ice cube trays at home (which is the only place people actually fill ice cube trays) are not motivated to fill the compartments to precise and carefully measured levels just to make ice. There was no known reason to want to make perfectly dimensioned ice cubes. Whether or not indicia would make doing so easier is irrelevant without any motivation to do so in the first place.

2) Second, if it would be more convenient for users to have filling indicia on their ice cube trays, then there would certainly be ice cube trays with filling indicia in existence. The fact that there are no such ice cube trays, when it would be trivial and essentially costless to add filling indicia, proves that there never was any motivation to do so.

3) Third, the teachings of the references themselves fail to provide any support for the idea that people were motivated to fill ice cube trays to exact, measured levels. Spreen is merely an ordinary ice cube tray (albeit with removable partitions), and Shepherd and Hughes are merely single-compartment containers with filling indicia.

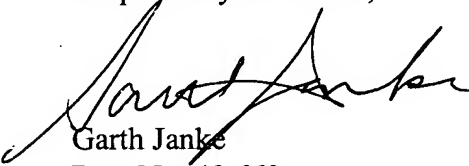
Fraenkel is the only reference cited that suggests providing a fill level in an ice cube tray, and that is why Fraenkel is important. But Fraenkel fails to motivate fill *indicia* because the Fraenkel tray is filled in a factory setting where it is important to get the quantity precisely right, and in that environment human beings would not fill the trays so that visual indications of fill levels would not be useful.

Applicant has made all of three of these arguments before. Each one shows that the basis for the rejections is incorrect. It is respectfully submitted that Applicant has met her burden under

MPEP 2142 *et seq.* and the burden has shifted back to the Examiner to come forward with additional evidence or arguments to support the rejections. Either that or the rejections must be withdrawn.

The only motivation to do what Applicant did was that described in Applicant's patent application. Applicant had a unique recognition--that it would be desirable to provide for both measuring and storage of multiple meal portions. Seen properly, the invention is not merely the mechanical or rote addition of measuring indicia to a multi-compartment container such as an ice cube tray, it includes a critical recognition that the result would be beneficial, a recognition that was clearly missing in the prior art.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Garth Janke', written over the printed name.

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